92-1010

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IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1992

No._____

JAMES W. DEATON

PETITIONER

V.

U.S. DEPARTMENT OF AGRICULTURE

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

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QUESTIONS

1. An agency employee testified under oath that it is an acceptable risk to intentionally produce and intentionally release a known human pathogen upon an unsuspecting human population. Does a federal agency have the right to intentionally produce and intentionally release a known human pathogen upon an unsuspecting human population? If so, what is the legal way that a test human population is chosen and the legal way of selecting the person responsible for the production and release of the known human pathogen upon an unsuspecting human population?
2. Is it legal for a federal agency to charge an employee (federal manager) with insubordination and punish the employee because he will not force agency employees to work in a known human pathogen infested area without agency safety officer assistance?
3. Is it legal for a federal agency to charge an employee (federal manager) with insubordination and punish the employee because he will not intentionally produce and intentionally release upon an unsuspecting human population a known human pathogen?
4. When no one in a federal agency will intentionally produce and intentionally release a known human pathogen upon an unsuspecting human population, is it legal for the federal agency to take the taxpayer dollars and hire someone outside the federal agency to intentionally produce and intentionally release a known human

pathogen upon an unsuspecting human population?

5. Is it legal for a federal agency to ignore a request for an environmental impact statement prior to the agency releasing a known human pathogen upon an unsuspecting human population?
6. Is it legal for a federal agency to intentionally make an employee party to the transfer of taxpayer dollars where a human pathogen is intentionally released upon an unsuspecting human population over the employees objection?

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Whistleblower Protection Act. The Petitioner respectfully prays for a writ of certiorari to review the judgement of the United States Court of Appeals for the Federal Circuit in this case.

OPINIONS BELOW

The opinion of the Court of Appeals is given in the Appendix on pages 1 thru 4. The opinion of the Administrative Judge for the Merit Systems Protection Board is given in the Appendix on pages 5 thru 14.

JURISDICTION

The judgement of the court of Appeals, Appendix page 15, was entered on September 25, 1992, The Petition for Rehearing was denied on October 20, 1992, Appendix page 16. The jurisdiction of this court

was supplied me by an information sheet from the U.S. court of Appeals for the Federal Circuit. I am the petitioner pro se.

STATEMENT OF THE ISSUE

The written record does not support the conclusions drawn by the United States Court of Appeals For The Federal Circuit.

STATEMENT OF REASONS WHY WRIT OF CERTIORARI BE GRANTED

I respectfully request that I be awarded my rights concerning the Whistleblower Protection Act because in 1989 I do not believe it was legal for a federal agency to intentionally produce and intentionally release upon an unsuspecting human population a human pathogen that is hospital waste and has been known to kill people since 1888. I do not believe that it is legal for a federal agency to ignore an agency engineer's request for safety officer assistance and that an environmental impact study be made concerning the release of a known human pathogen into the environment when the agency engineer is ordered by the agency to evaluate the project. I do not believe it is legal for an agency to punish a federal manager because he will not intentionally produce and intentionally release into the environment and onto an unsuspecting human population a known human pathogen and force agency employees to work in the known human pathogen infested area

without safety officer assistance. When no federal manager will intentionally produce and intentionally release a known human pathogen and a known biological warfare agent upon an unsuspecting human population I do not believe it is legal for a federal agency to use taxpayer dollars to hire someone outside the federal system to intentionally produce and intentionally release a known human pathogen upon an unsuspecting human population. I do not believe it is legal through deception for a federal agency to make an employee party to the transfer of federal tax dollars that are used illegally.

STATEMENT OF THE CASE

The record shows that as stated in the January 8, 1991 memo from M. E. Carter and the April 9, 1991 memo from R. D. Plowman I was charged with insubordination (R. R. Oltjen sworn statement) and removed as Research Leader because I would not intentionally produce and intentionally release upon an unsuspecting human population namely the students of Mississippi State University and the residents of Oktibbeha County Mississippi the human pathogen Salmonella enteritidis.

The record shows that Salmonella enteritidis is a paratyphoid which can produce an illness characteristic of typhoid fever and has been used as biological warfare agents. The record shows the agency wanted me to produce as much as 200 pounds of the human pathogen

daily and demanded that the human pathogen be released into the environment. The record also shows the human pathogen the agency releases into the environment is medical waste the comes from a dead or sick man, woman, or child and has been known to kill people and make people sick since 1888. The record clearly shows that the idea of releasing the human pathogen into the environment was introduced during the April, 1989 visit by A. B. Thiermann and Charles Beard. I promptly told Thiermann I was not planning to release the human pathogen on the residents of Starkville, Mississippi. And the record clearly shows that Thiermann testified under oath that he did not plan to contain the human pathogen to the work area and that Thiermann stated under oath that he did not have the expertise to make the determination of containing the human pathogen to the work area. Thiermann also testified that he is no engineer. The record shows that an agency engineer (Mr. Allen) was assigned to the project by P. A. Putnam and that the agency engineer recommended safety considerations for the workers and that an Environmental Impact Study be made for this project. The recommendations by the agency engineer were ignored and I believe this man lost his job also after his office was first moved to a greenhouse. The record then shows that following the agency engineers report, I was told by Putnam to build a facade and act like I am containing the human pathogen to the work area when I knew I was not. I would not do that so I was ordered to be in Knipling's office bright

and early the next morning where I was greeted with the statement "I don't want to know the facts". The record shows I carried the facts to Knipling. The timing when the agency wanted me to produce and release the human pathogen on an unsuspecting human population was interesting also, because I had just returned to work from a spleenectomy following a leukemia diagnosis and the agency knew that I desperately needed the health insurance.

From a safety standpoint, the record shows that I asked for safety assistance, Mr. Allen asked P. A. Putnam for safety assistance and Mississippi State University asked that the protocol for the human pathogen project be passed through their Biosafety Committee. As the record states, the agency responded by not allowing the agency safety officers to become involved and searched this country until they found someone who was not concerned with the health and welfare of the employees and the general public (Oltjen sworn statement). Even though the agency had open flock facilities outside the pathogen contained compounds in Athens, Georgia where Charles Beard is located, as well as College Station, Texas, Georgetown, Delaware and finally Beltsville, Maryland where R. R. Oltjen and E. B. Knipling are located, the record shows the agency did not try to force anyone within the agency other than me to produce and release the human pathogen upon an unsuspecting human population.

The record also shows that both Beard and Thiermann were

members of a 1988 Salmonella enteritidis Agency Task Force who wrote the agency report which showed that in the 1970's and 1980's that employees were at risk from Salmonella enteritidis while working with turkeys infected with Salmonella enteritidis and the invasive pathogenic properties of Salmonella enteritidis for humans were discussed in 1988. This 1988 Salmonella enteritidis Agency Task Force also showed that Salmonella enteritidis in an ambient environment of 21-24 degrees centigrade will survive 730 days in a dusty feed environment and 750 days (maximum observation period) in meat. Both Thiermann and Beard were members of this agency task force and the report published in 1988-before the agency wanted me to produce and release the human pathogen on an unsuspecting human population and force agency employees to work in the human pathogen infested area in 1989. Beard also supervised the agency employee who wrote the chapter of the 1965, 1972 and 1978 editions of the textbook which shows that the survivability of the human pathogen once placed in the environment has a long life span and is dangerous for the employees and their families. The record shows that the human pathogen as stipulated in these textbooks can survive in flies for four weeks, can be transmitted by flies as much as three miles, and can survive for several weeks on vegetables kept at room temperature. The record shows there are a supermarket, student apartments, restaurants and sororities just across the street from where the agency demanded I produce 200

pounds daily of the human pathogen and release the human pathogen into the environment. The record shows that Knipling acknowledged the fact that he was aware of the literature concerning employee safety and human health implications from my May, 1989 meeting with him.

The record also shows that Beard stated during his April, 1989 visit that he did not know the implications of forcing employees to work in a human pathogen infested area. Beard only had 40 chickens infected with Salmonella enteritidis and the agency wanted me to infect 3000 chickens then force employees to work in the human pathogen infested area and with no safety officer assistance. The record shows that as with any pathogenic organism, the human pathogen must first be introduced into an area before sickness and death can occur.

In 1989, the agency was well aware that federal managers can be criminally prosecuted for violating environmental laws. The federal managers that were prosecuted killed fish. The organism the agency wanted me to release into the environment kiils people. The record shows that in March, 1988 the agency stated that we must abide by the National Institutes of Health, 1985 regulations which states that air locks, negative air pressure and air filters are secondary barriers designed to protect against the accidental release outside the facility. In 1989 the agency would not let me follow these regulations.

The record shows that in June, 1989 the salmonella enteritidis project was cancelled at the agency lab where I worked. However, in

July, 1989 the project was assigned to me and as late as October 30, 1989 the project was still assigned to me. The record also shows that the agency sent the paperwork to the agency Administrative Office at Mississippi State for the Pennsylvania project with instructions to not let me know this, obviously with intent to deceive.

In a taped recording by the Administrative Judge, R. R. Oltjen discusses a project concerned with Salmonella enteritidis that was being conducted in Maryland. The record shows that a Maryland Assistant Secretary notes that 500 people became sick and 11 people died during that time frame when the agency was releasing or condoning the release of the human pathogen in Maryland. This Maryland Assistant Secretary as the record shows, reported that the human pathogen was recovered from dust samplings. Mr. Michael B. Robinson, a 20 year veteran animal caretaker, testified that dust from within the chicken house is deposited outside the chicken house. The record shows that I made certain in May, 1989, that E. B. Knipling was aware that the dust from within the chicken house could spread throughout the area. Knipling stated, "We originally assigned the research to Mississippi on the basis that such rigorous health and safety precautions would not be required". In 1989, in addition to people other than the poultry industry and Mississippi State University Officials asking the agency not to release the human pathogen into the environment, the record shows that the City of Starkville, Mississippi sanitation engineers did not want the

pathogen released into the environment.

The record shows that in 1989, P. A. Putnam and/or E. B. Knipling discussed the situation with both Mississippi State University Officials and the poultry industry and neither wanted the human pathogen released into the environment. The record then shows that the agency found someone outside the federal system to intentionally produce and intentionally release the human pathogen into the environment.

The record also shows that Charles Beard neither testified nor submitted a sworn statement for the record, therefore how could an Administrative Judge rely entirely on employee safety implications with a known human pathogen and a known biological warfare agent, which is clearly stated in the record when the man did not even testify? The record also clearly shows by Thiermanns own testimony before the Administrative Judge, that Thiermann knew in April, 1989, that he was going to work for the group of people in the agency that obtains taxpayer dollars to clean up the human pathogen once someone releases the human pathogen into the environment. The record shows that R. D. Plowman, E. B. Knipling or F. A. Putnam stated their intentions such as, quotes, "tracking Salmonella through large flocks and into the environment", "we had only allocated enough money to do it in an existing chicken house", "what I heard was the reason Dr. Deaton envisioned such expensive structural changes was that he wanted to

contain the pathogen", "discussions were regarding funds available, cost and need for HEPA filters in building 28. I told him it would take too long to implement, would be too costly, and that is not what headquarters and APHIS wanted", "what was wanted without unnecessary health, safety and political concerns was a simulated flock test on transmission of Salmonella enteritidis (SE)", and "renovation of facilities to meet the immediate research needs would be costly; furthermore, the high degree of containment that would be incorporated in the renovated facilities would compromise the objectives of the planned flock simulation study". If these people manage other biological warfare agents, animal and plant diseases and insects in the same manner as with this project, then it is easy to see how the sweetpotato whitefly went from Florida to California and a continual problem seems to exist with the Mediterranean fruit fly.

CONCLUSION

The record speaks for itself and the responsible individuals within the agency knew precisely what they were doing in 1988 and 1989. I did nothing wrong and I did not deserve the turmoil that was forced into my life and my family's life because I would not intentionally produce and intentionally release upon an unsuspecting human population a human pathogen and force agency employees to work in the human pathogen infested area without safety officer assistance. The fact also remains that people are becoming sick with

some dieing and business failures are occuring in Pennsylvania resulting from Salmonella enteritidis infection, with taxpayer dollars used in the clean-up, which I do not believe that is the situation in Mississippi. The record also shows that about 61 million of taxpayer dollars were used by the agency in the Pennsylvania area about nine years ago to clean-up avian influenza, a disease that kills only chickens, not people.

I respectfully request my rights be awarded me in this matter. Using federal tax dollars and placing people at risk or causing human sickness and death by intentionally having a human pathogen and known biological warfare agent released into the environment and upon an unsuspecting human population by individuals within a federal agency with the intent to obtain more taxpayer dollars is surely illegal. The human pathogen released upon the people is medical waste and is obtained from a hospital. Accordingly, this Petition for Certiorari should be granted.

Dated: December 7, , 1992.

James W. Deaton

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